UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM TRIER, JEFFREY McKINSEY,
HAROLD DANIEL, JOHN AUSTIN HARRINGTON,
RICHARD SPARKS and JACOB TRIER,

Plaintiffs,

CASE NO.: 2:17-cv-10236
HON. GEORGE CARAM STEEH
MAG. JUDGE ANTHONY P. PATTI

v.

GENESEE COUNTY, SHERIFF ROBERT
PICKELL, SCOTT HOPE, ALLEN & HOPE
PROCESS SERVING MANAGEMENT CO., INC.,
a Michigan corporation,

Defendants.

DEFENDANT, GENESEE COUNTY'S, ANSWER TO PLAINTIFFS' AMENDED COMPLAINT; AFFIRMATIVE DEFENSES; RELIANCE UPON JURY DEMAND and PROOF OF SERVICE

SCOTT P. BATEY (P54711)
BATEY LAW FIRM, PLLC
Attorney for Plaintiffs
30200 Telegraph Road – Suite 400
Bingham Farms, MI 48025
(248) 540-6800
(248) 540-6814 – fax
sbatey@bateylaw.com

KYLE R. RIEM (P48341)
KYLE R. RIEM ATTORNEY AT LAW, P.C.

AUDREY J. FORBUSH (P41744)
PLUNKETT COONEY
Attorney for Defendant, Genesee Co.
Plaza One Financial Center
111 E. Court Street – Suite 1B
Flint, MI 48502
(810) 342-7014
(810) 232-3159 – fax
aforbush@plunkettcooney.com

MICHAEL W. EDMUNDS (P55748)
GAULT DAVISON, P.C.

Attorney for Defendants Scott Hope and Allen & Hope
8137 Embury Road – Unit 1
Grand Blanc, MI 48439
(810) 694-5678
(810) 694-7767 – fax
kyle@saboriem.com

Attorney for Defendant Pickell
G8455 S. Saginaw Street – Suite 2
Grand Blanc, MI 48439
(810) 234-3633 - 211
(810) 579-0680 – fax
MEdmunds@EdmundsLawOffice.com

STEVEN F. SPENDER (P20830)
STEVEN F. SPENDER, P.C.
Co-Counsel for Defendants Scott Hope and Allen & Hope
8137 Embury Road – Unit 1
Grand Blanc, MI 48439
(810) 694-5678
(810) 694-7767 – fax
sspender@spenderlaw.com

**DEFENDANT, GENESEE COUNTY'S,
ANSWER TO PLAINTIFFS' AMENDED COMPLAINT**

NOW COMES Defendant, **GENESEE COUNTY**, by and through its attorneys, **PLUNKETT COONEY,** and for its Answer to Plaintiff's Amended Complaint, states as follows:

1. In response to the allegations contained in paragraph 1, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

2. In response to the allegations contained in paragraph 2, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

3. In response to the allegations contained in paragraph 3, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

4. In response to the allegations contained in paragraph 4, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

5. In response to the allegations contained in paragraph 5, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

6. In response to the allegations contained in paragraph 6, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

7. In response to the allegations contained in paragraph 7, same are admitted.

8. In response to the allegations contained in paragraph 8, same are admitted.

9. In response to the allegations contained in paragraph 9, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

10. In response to the allegations contained in paragraph 10, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

11. In response to the allegations contained in paragraph 11, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

12. In response to the allegations contained in paragraph 12, same are denied as untrue in the form and manner alleged and in fact.

13. In response to the allegations contained in paragraph 13, same are denied as untrue in the form and manner alleged and in fact.

GENERAL FACTUAL ALLEGATIONS

14. Defendant incorporates by reference paragraphs 1-13 of its Answer to Plaintiff's Amended Complaint with the same force and effect as though fully set forth herein.

15. In response to the allegations contained in paragraph 15, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

16. In response to the allegations contained in paragraph 16, it is admitted that Defendant Pickell is the elected Sheriff of Defendant, Genesee County, and is the highest ranking law enforcement official in the County. The

remainder of the allegations are denied as untrue in the form and manner alleged and in fact.

17. In response to the allegations contained in paragraph 17, same are denied as untrue in the form and manner alleged and in fact.

18. In response to the allegations contained in paragraph 18, same are denied as untrue in the form and manner alleged and in fact.

19. In response to the allegations contained in paragraph 19, same are denied as untrue in the form and manner alleged and in fact.

20. In response to the allegations contained in paragraph 20, same are denied as untrue in the form and manner alleged and in fact.

21. In response to the allegations contained in paragraph 21, same are denied as untrue in the form and manner alleged and in fact.

22. In response to the allegations contained in paragraph 22, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

23. To the extent that the allegations contained in paragraph 23 pertain to this Defendant, same are denied as untrue in the form and manner alleged and in fact.

24. To the extent that the allegations contained in paragraph 24 pertain to this Defendant, same are denied as untrue in the form and manner alleged and in fact.

25. In response to the allegations contained in paragraph 25, same are denied as untrue in the form and manner alleged and in fact.

26. To the extent that the allegations contained in paragraph 26 pertain to this Defendant, same are denied as untrue in the form and manner alleged and in fact.

27. In response to the allegations contained in paragraph 27, same are denied as untrue in the form and manner alleged and in fact.

28. In response to the allegations contained in paragraph 28, same are denied as untrue in the form and manner alleged and in fact.

29. In response to the allegations contained in paragraph 29, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

30. In response to the allegations contained in paragraph 30, same are denied as untrue in the form and manner alleged and in fact.

31. In response to the allegations contained in paragraph 31, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

32. In response to the allegations contained in paragraph 32, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

33. In response to the allegations contained in paragraph 33, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

34. In response to the allegations contained in paragraph 34, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

35. In response to the allegations contained in paragraph 35, same are denied as untrue in the form and manner alleged and in fact.

36. In response to the allegations contained in paragraph 36, same are denied as untrue in the form and manner alleged and in fact.

37. In response to the allegations contained in paragraph 37, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

38. In response to the allegations contained in paragraph 38, same are denied as untrue in the form and manner alleged and in fact.

39. In response to the allegations contained in paragraph 39, same are denied as untrue in the form and manner alleged and in fact.

40. In response to the allegations contained in paragraph 40, same are denied as untrue in the form and manner alleged and in fact.

41. In response to the allegations contained in paragraph 41, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

42. In response to the allegations contained in paragraph 42, Defendant is without knowledge or information sufficient to form a belief as to the truth of same and leaves Plaintiffs to their proofs.

43. In response to the allegations contained in paragraph 43, same are denied as untrue in the form and manner alleged and in fact.

44. In response to the allegations contained in paragraph 44, same are denied as untrue in the form and manner alleged and in fact.

COUNT I
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT –
"RICO 18 U.S.C.A. §§1961, *et seq.* – EXTORTION

45. Defendant incorporates by reference paragraphs 1-44 of its Answer to Plaintiff's Amended Complaint with the same force and effect as though fully set forth herein.

46. In response to the allegations contained in paragraph 46, same are denied as untrue in the form and manner alleged and in fact.

47. In response to the allegations contained in paragraph 47, same are denied as untrue in the form and manner alleged and in fact.

48. In response to the allegations contained in paragraph 48, same are denied as untrue in the form and manner alleged and in fact.

49. In response to the allegations contained in paragraph 49, same are denied as untrue in the form and manner alleged and in fact.

50. In response to the allegations contained in paragraph 50, same are denied as untrue in the form and manner alleged and in fact.

51. In response to the allegations contained in paragraph 51, same are denied as untrue in the form and manner alleged and in fact.

52. In response to the allegations contained in paragraph 52, same are denied as untrue in the form and manner alleged and in fact.

53. In response to the allegations contained in paragraph 53, same are denied as untrue in the form and manner alleged and in fact.

54. In response to the allegations contained in paragraph 54, same are denied as untrue in the form and manner alleged and in fact.

55. In response to the allegations contained in paragraph 55, same are denied as untrue in the form and manner alleged and in fact.

WHEREFORE, Defendant, **GENESEE COUNTY**, respectfully requests that this Honorable Court enter an Order for Judgment of No Cause for Action in its favor, with costs and attorney fees to be taxed.

COUNT II
RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT – "RICO" 18 U.S.C.A. §§ 1961 *et seq.* – VIOLATIONS OF THE HOBBS ACT 18 U.S.C. § 1951

56. Defendant incorporates by reference paragraphs 1-55 of its Answer to Plaintiff's Amended Complaint with the same force and effect as though fully set forth herein.

57. In response to the allegations contained in paragraph 57, same are denied as untrue in the form and manner alleged and in fact.

58. In response to the allegations contained in paragraph 58, same are denied as untrue in the form and manner alleged and in fact.

59. In response to the allegations contained in paragraph 59, same are denied as untrue in the form and manner alleged and in fact.

60. In response to the allegations contained in paragraph 60, same are denied as untrue in the form and manner alleged and in fact.

61. In response to the allegations contained in paragraph 61, same are denied as untrue in the form and manner alleged and in fact.

62. In response to the allegations contained in paragraph 62, same are denied as untrue in the form and manner alleged and in fact.

63. In response to the allegations contained in paragraph 63, same are denied as untrue in the form and manner alleged and in fact.

64. In response to the allegations contained in paragraph 64, same are denied as untrue in the form and manner alleged and in fact.

65. In response to the allegations contained in paragraph 65, same are denied as untrue in the form and manner alleged and in fact.

66. In response to the allegations contained in paragraph 66, same are denied as untrue in the form and manner alleged and in fact.

WHEREFORE, Defendant, **GENESEE COUNTY**, respectfully requests that this Honorable Court enter an Order for Judgment of No Cause for Action in its favor, with costs and attorney fees to be taxed.

COUNT III
VIOLATION OF 42 U.S.C. § 1983
VIOLATIONS OF PLAINTIFFS' FIRST AMENDMENT RIGHTS – POLITICAL PATRONAGE

67. Defendant incorporates by reference paragraphs 1-66 of its Answer to Plaintiff's Amended Complaint with the same force and effect as though fully set forth herein.

68. In response to the allegations contained in paragraph 68, same are denied as untrue in the form and manner alleged and in fact.

69. The statements contained in paragraph 69 are legal conclusions as opposed to well pled allegations of fact and therefore no response is required. To the extent that a response is required, Defendant affirmatively denies any violations of the First Amendment.

70. The statements contained in paragraph 70 are legal conclusions as opposed to well pled allegations of fact and therefore no response is required. To the extent that a response is required, Defendant affirmatively denies any violations of the First Amendment.

71. The statements contained in paragraph 71 are legal conclusions as opposed to well pled allegations of fact and therefore no response is required. To the extent that a response is required, Defendant affirmatively denies any violations of the First Amendment.

72. The statements contained in paragraph 72 are legal conclusions as opposed to well pled allegations of fact and therefore no response is required. To the extent that a response is required, Defendant affirmatively denies any violations of the First Amendment.

73. The statements contained in paragraph 73 are legal conclusions as opposed to well pled allegations of fact and therefore no response is

required. To the extent that a response is required, Defendant affirmatively denies any violations of the First Amendment.

74. The statements contained in paragraph 74 are legal conclusions as opposed to well pled allegations of fact and therefore no response is required. To the extent that a response is required, Defendant affirmatively denies any violations of the First Amendment.

75. In response to the allegations contained in paragraph 75, same are denied as untrue in the form and manner alleged and in fact.

76. In response to the allegations contained in paragraph 76, same are denied as untrue in the form and manner alleged and in fact.

77. In response to the allegations contained in paragraph 77, same are denied as untrue in the form and manner alleged and in fact.

78. In response to the allegations contained in paragraph 78, same are denied as untrue in the form and manner alleged and in fact.

79. In response to the allegations contained in paragraph 79, same are denied as untrue in the form and manner alleged and in fact.

80. In response to the allegations contained in paragraph 80, same are denied as untrue in the form and manner alleged and in fact.

81. In response to the allegations contained in paragraph 81, same are denied as untrue in the form and manner alleged and in fact.

WHEREFORE, Defendant, **GENESEE COUNTY**, respectfully request that this Honorable Court enter an Order for Judgment of No Cause for Action in its favor, with costs and attorney fees to be taxed.

COUNT IV
TORTIOUS INTERFERENCE WITH A BUSINESS/CONTRACTUAL RELATIONSHIP

82. Defendant incorporates by reference paragraphs 1-81 of its Answer to Plaintiff's Amended Complaint with the same force and effect as though fully set forth herein.

83. In response to the allegations contained in paragraph 83, same are denied as untrue in the form and manner alleged and in fact.

84. In response to the allegations contained in paragraph 84, same are denied as untrue in the form and manner alleged and in fact.

85. In response to the allegations contained in paragraph 85, same are denied as untrue in the form and manner alleged and in fact.

86. In response to the allegations contained in paragraph 86, same are denied as untrue in the form and manner alleged and in fact.

87. In response to the allegations contained in paragraph 87, same are denied as untrue in the form and manner alleged and in fact.

WHEREFORE, Defendant, **GENESEE COUNTY**, respectfully requests that this Honorable Court enter an Order for Judgment of No Cause for Action in its favor, with costs and attorney fees to be taxed.

Respectfully submitted,

PLUNKETT COONEY

By ***/s/Audrey J. Forbush***
AUDREY J. FORBUSH (P41744)
Attorney for Defendant,
Genesee County
Plaza One Financial Center
111 E. Court Street – Suite 1B
Flint, MI 48502
(810) 342-7014
aforbush@plunkettcooney.com

Dated: March 22, 2017

DEFENDANT, GENESEE COUNTY'S, RELIANCE UPON DEMAND FOR JURY TRIAL

NOW COMES Defendant, **GENESEE COUNTY**, by and through its attorneys, **PLUNKETT COONEY**, and hereby relies upon the demand for trial by jury filed by Plaintiffs in the above-entitled cause of action.

Respectfully submitted,

PLUNKETT COONEY

By ***/s/Audrey J. Forbush***
AUDREY J. FORBUSH (P41744)
Attorney for Defendant,
Genesee County
Plaza One Financial Center

111 E. Court Street – Suite 1B
Flint, MI 48502
(810) 342-7014
aforbush@plunkettcooney.com

Dated: March 22, 2017

DEFENDANT, GENESEE COUNTY'S, AFFIRMATIVE DEFENSES

NOW COMES Defendant, **GENESEE COUNTY**, by and through its attorneys, **PLUNKETT COONEY**, and hereby asserts the following Affirmative Defenses in the above-entitled cause of action, states as follows:

1. Plaintiffs have failed to state a claim upon which relief can be granted.

2. Plaintiffs may have failed to mitigate their damages. Defendant reserves the right to conduct discovery on this issue.

3. The proximate cause of any and all injuries suffered by the Plaintiffs was the result of the voluntary misconduct of the Plaintiffs.

4. Plaintiffs' claims may be barred by the applicable statutes of limitation and/or laches.

5. Plaintiffs' civil rights claim are barred as to Genesee County for the reason that the theory of *respondeat superior* is not the basis for a viable claim under 42 U.S.C. § 1983.

6. The proximate cause of any and all injuries suffered by the Plaintiffs was the result of Plaintiffs' own contributory and/or comparative negligence and/or unlawful behavior.

7. Plaintiffs have failed to identify any pattern, practice or procedure of Genesee County which was the moving force of any violation of the Plaintiffs' constitutional rights.

8. Plaintiffs' 42 U.S.C. § 1983 claim against Genesee County is barred for the reason that there has been no official policy, custom or practice alleged in the Complaint and Plaintiffs' claims are deficient.

9. Plaintiffs have failed to allege sufficient facts establishing the existence of an "enterprise" as defined in 18 U.S.C. § 1962.

10. Plaintiffs have failed to allege sufficient facts establishing the existence of an "enterprise" distinct from the alleged racketeering activity.

11. Plaintiffs have failed to allege facts which, if true, establish a *prima facie* case of extortion under Michigan law.

12. To the extent Plaintiffs maintain any state law claims, Defendant, Genesee County is entitled to governmental immunity.

13. Plaintiffs have failed to allege sufficient facts to establish that requiring/requesting payment for deputizing individuals is wrongful.

14. Plaintiffs have failed to allege sufficient facts to establish there was any effect on commerce.

15. Plaintiffs' claims for noneconomic damages in Counts I and II are not legally cognizable.

16. Defendant reserves the right to amend its affirmative defenses as same may become known through the course of discovery.

Respectfully submitted,

PLUNKETT COONEY

By ***/s/Audrey J. Forbush***
AUDREY J. FORBUSH (P41744)
Attorney for Defendant,
Genesee County
Plaza One Financial Center
111 E. Court Street – Suite 1B
Flint, MI 48502
(810) 342-7014
aforbush@plunkettcooney.com

Dated: March 22, 2017

PROOF OF SERVICE

KATHALEEN M. FORDE hereby certifies that on the 22nd day of March, 2017, she caused to be served a copy of DEFENDANT, GENESEE COUNTY'S, ANSWER TO PLAINTIFFS' AMENDED COMPLAINT, AFFIRMATIVE DEFENSES, RELIANCE UPON JURY DEMAND and PROOF OF SERVICE via CM/ECF electronic filing with the United States District Court for the Eastern District of

Michigan, Southern Division, which will then provide electronic notice of this filing to counsel of record.

/s/Kathaleen M. Forde
KATHALEEN M. FORDE

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